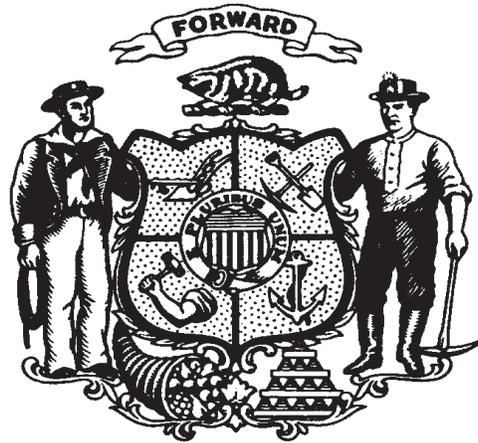


# Wisconsin Administrative Register

No. 551



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## Emergency rules now in effect

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

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### Commerce (2)

#### (Financial Assistance for Businesses and Communities)

#### (Chs. Comm 105–128)

1. Rules adopted revising **ch. Comm 113** relating to the allocation of volume cap on tax-exempt private activity bonds.

#### Finding of emergency

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

Pursuant to s. 560.032, Stats., the Department of Commerce (Commerce) is responsible for administering the allocation of volume cap. The emergency rule is being adopted to incorporate in the administrative code recent changes to the Internal Revenue Code (Section CFR 146) which increases state volume cap limits on tax-exempt private activity bonds. The year 2000 limit was \$50 per resident of the state. For the year 2001 the limit has been raised to \$62.50; for the year 2002, the limit will be \$75.00; and thereafter, the limit will be indexed to inflation. The rule identifies a formula for the allocation of volume cap for the year 2001 and future years. This emergency rule outlines the distribution of the volume cap between the State Building Commission, the Wisconsin Housing and Economic Development Authority, and Commerce. The rules are also being revised to provide an allocation process that will allow Commerce to be more responsive to the needs of businesses as changes occur in the state's economy.

**Publication Date:** April 26, 2001  
**Effective Date:** April 26, 2001  
**Expiration Date:** September 23, 2001  
**Hearing Date:** July 16, 2001  
**Extension Through:** November 21, 2001

2. Rules adopted revising **ch. Comm 110** relating to brownfields redevelopment grants.

#### Finding of emergency

The Department of Commerce finds that an emergency exists and that adoption of the rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under section 3628 of 2001 Wis. Act 16, the Department must begin accepting applications from trustees and nonprofit organizations, for brownfields redevelopment grants. And, under section 3630 of the Act, the Department must begin disallowing use of the grant funds to pay either delinquent real estate taxes or lien claims of the Department of Natural Resources or the federal Environmental Protection Agency.

The Department's rules for administering the brownfields grant program are currently contained in ch. Comm 110 Wis. Adm. Code. These current rules do not recognize trustees and nonprofit organizations as eligible applicants, and do not include disallowing grant funds for payments on either back taxes, or on state or federal lien claims.

In November, the Department expects to begin promulgating permanent rules for making ch. Comm 100 consistent with Act 16. Due to the mandatory rulemaking procedures under ch. 227, Stats., the permanent rules are not expected to become effective until July 1, 2002. In order to comply with Act 16 by accepting applications and issuing grants for trustees and nonprofit organizations prior to them, emergency rules reflecting these changes are needed, as included herein. These emergency rules also address the above disallowance for grant proceeds, and include some minor updating of the ch. Comm 110 criteria for submitting grant applications and for filing subsequent financial and program reports.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

**Publication Date:** October 27, 2001  
**Effective Date:** October 27, 2001  
**Expiration Date:** March 26, 2002

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### Financial Institutions – Corporate and Consumer Services

Rules adopted repealing **ch. SS 3** and repealing and recreating **chs. DFI–CCS 1 to 6**, created as emergency rules, relating to the Uniform Commercial Code.

#### Finding of emergency

2001 Act 10 repealed and recreated the Wisconsin Uniform Commercial Code (“UCC”), effective July 1, 2001. The act

authorizes the Department of Financial Institutions to promulgate rules to implement the UCC. Without these rules, the department will be unable to operate either a state–wide lien filing system or give effect to the provisions of the UCC before permanent rules can be promulgated. The act is part of an effort by the National Conference of Commissioners on Uniform State Laws and all member states to implement a revised Model Uniform Commercial Code on July 1, 2001 to facilitate interstate commerce with nation–wide uniformity in lien filings. The rules address general provisions, acceptance and refusal of documents, the information management system, filing and data entry procedures, search requests and reports, and other notices of liens under the UCC.

**Publication Date:** October 24, 2001  
**Effective Date:** October 24, 2001  
**Expiration Date:** March 23, 2002  
**Hearing Date:** December 3, 2001  
 [See notice this Register]

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## Health & Family Services (2)

### (Community Services, Chs. HFS 30–)

1. A rule was adopted amending s. **HFS 94.20 (3)**, relating to patients' rights.

#### Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department operates secure mental facilities for the treatment of ch. 980, Stats., sexually violent patients. Departmental investigations have indicated that a portion of the ch. 980 inpatient population has routinely abused their s. HFS 94.20 telephone rights by making inappropriate calls to members of the public, by fraudulently placing numerous long distance calls that are billed to innocent third–parties or by operating fraudulent schemes. Since the Department has previously had no means of monitoring patient telephone use, the extent of this activity is unknown, but given the experience of investigations triggered by citizen complaints, it is clear that these sorts of activities are not infrequent among this population. In addition, experience with telephone monitoring in other secure institutions indicates that call monitoring can and does help staff detect contraband and other security–related issues and activities. These abuses are clearly contrary to the therapeutic activities conducted at the secure mental health facilities.

Until recently, the Department has been unable to stop these abuses because the Department's facilities lacked secure telephone systems. Previous DHFS efforts to obtain secure telephone systems from the telephone system's vendor used by the Department of Corrections were not successful because the call volume at DHFS's secure mental health facilities were viewed as insufficient to support the telephone system.

In late 2000, the Department of Corrections selected a new vendor for its secure telephone system. In May 2001, the new vendor agreed to also install the system in DHFS's secure mental health facilities. The installation of the system at the facilities will be completed by June 20, 2001. The systems will allow the Department to establish and enforce calling lists for each inpatient and monitor inpatients' calls for

counter–therapeutic activity. An inpatient's calling lists is a finite number of telephone numbers associated with persons the inpatient is approved to contact by telephone. Use of calling lists alone, however, is insufficient to discourage and minimize inpatient attempts to subvert the system. The Department must monitor phone calls made by ch. 980 inpatients to discourage and minimize the occurrence of inpatients calling persons on their calling list who, in turn, subvert the secure system by forwarding the inpatient's call for the prohibited purposes and activities previously described. The Department must be able to monitor the phone calls of ch. 980 inpatients both to protect the public and promote therapeutic activities at the secure mental health facilities.

The Department is issuing these rules on an emergency basis to protect the public's safety by minimizing the recurring fraudulent activity associated with telephone use. These rules also ensure the public's safety and welfare by promoting the effective treatment mission of the secure mental health facilities. The recording capability of the telephone system hardware that has been installed at the Wisconsin Resource Center and the Sand Ridge Secure Treatment Center cannot be turned off, i.e., when the system is functional, all features of the system are fully operational. If the secure telephone system is not operational, both the Wisconsin Resource Center and the Sand Ridge facility will lose the therapeutic and safety advantages afforded by the system. Since the Sand Ridge facility is accepting its first patients during the week of June 18th, there is not alternative telephone system for patients.

**Publication Date:** June 22, 2001  
**Effective Date:** June 22, 2001  
**Expiration Date:** November 19, 2001  
**Hearing Date:** September 12, 2001

2. Rules adopted revising ch. **HFS 90**, relating to early intervention services for children birth to 3 with developmental needs.

#### Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the health and welfare of children receiving early intervention services under the Wisconsin "Birth to 3 Program." The facts constituting the emergency are as follows:

Counties must, under s. 51.44 (3) and (4), Stats., and s. HFS 90.06 (2), provide or contract for the provision of early intervention services for children with developmental needs in the age group from birth to 3. Qualifying children in each county are entitled to receive needed services. While counties may assess parents of children receiving early intervention services a share of those service costs, counties ultimately are responsible for the costs of providing such services. Since counties' cost exposure for Birth to 3 program costs is unlimited, unanticipated increases in a county's costs may result in a county suspending program services due to a lack of funding. Even though such cessations are illegal, one county indeed suspended the provision of needed services within the past year. By the time the Department was able to reinstate services in the county, enrolled children were deprived of needed services for several months. Given the negative effect such service cessations could have on children with disabilities, the Department needs to immediately alleviate the cost burden on counties by increasing the share of service costs parents must bear. In doing so, the Department will preserve the continuity of early intervention services.

The Department is also proceeding with the promulgation of the body of rules contained in this order as proposed permanent rules that will remain in effect when this emergency order expires. The full basis for the changes made by these orders is explained below:

Section HFS 90.06 (2) (h) specifies that county administrative agencies must determine the amount of parental liability for the costs of the early intervention services in accordance with ch. HFS 1. Chapter HFS 1 contains the Department's cost liability determination and ability to pay standards and guidelines for services purchased or provided by the Department and counties. Section HFS 90.06 (2) (h) also states that parents may satisfy any liability not met by third party payers if parents pay the amount determined in accordance with the family support payment formula in s. HFS 65.05 (7).

The Department's ability to pay system currently ties the Birth to 3 program to s. HFS 65.05 (7) and ch. HFS 1. Chapter HFS 90's use of these other Department administrative rules has had several undesirable consequences. First, the methodology in s. HFS 65.05 (7), while appropriate for families with children having severe disabilities, is inappropriate for the Birth to 3 program because of the variability in applying the methodology and the significantly greater turnover of families in the Birth to 3 program. This turnover of families makes the chapter's complex calculations relatively onerous on counties to administer.

Sections HFS 90.06 (2) (h) and 90.11 (2) (a) 2. and 4. cross reference and incorporate ch. HFS 1. Section HFS 1.01 (4) (d) allows counties to request an exemption from applying the ability to pay system because the county can document that the imposition of a ch. HFS 1 family cost sharing charge is administratively unfeasible. Twenty-four counties have demonstrated to the Department that their cost of administering the ability to pay system amounts to more than the revenues the counties collect. The relatively high cost of administering the program under the current provisions of ch. HFS 90 combined with relatively low rates of cost-sharing by families permitted by counties' application of s. HFS 65.05 (7), has made the program burdensome on some counties.

Second, federal policies governing Birth to 3 programs require participating states to administer a statewide early intervention system and do not allow a county to bill a family's insurance without the family's consent. Chapter HFS 1, however, requires that a family's insurance benefits be billed; a contradiction of federal law. Third, the current ability of counties to request and obtain exemption from participating in the ability to pay system also is contrary to federal policies requiring states to operate a uniform statewide early intervention system. While federal regulations are currently being revised, none of the regulations circulated by the U.S. Department of Education would have any bearing on the Department of Health and Family Service's promulgation of these administrative rules.

The Department's modifications to ch. HFS 90 have two results. First, since ch. HFS 90 no longer cross-references ch. HFS 1, counties could no longer request exemption from participating in Wisconsin's Birth to 3 program cost share. County participation in administering the Birth to 3 program cost share becomes mandatory. Second, the method of determining parents' share of the costs of needed services is simplified and standardized statewide and is based on the relationship of families' incomes to the federal poverty threshold.

The rules simplify the determination of parental cost share, thereby eliminating the current ability to pay system's inequities for families statewide and reducing counties'

administrative costs associated with the program. The Department's use of the federal poverty threshold, as revised annually, is a benchmark against which families' adjusted incomes are compared to determine the parental cost share liabilities. Under this system, the Department projects that the number of families required to share in the early intervention service costs will roughly double. Since each family's cost share will be based on approximately 1% of their income (as adjusted by a standard deduction for each child with a disability in the family) rather than the previous basis of 3% of income minus a standard deduction and disability-related expenses, the cost share of some families may increase. Families with incomes above 200% of the federal poverty level will be billed for part of the early intervention services their children receive. Families with adjusted incomes below 200% of the federal poverty threshold will be exempt from cost sharing. The Department projects that about 2,000 families will be exempt from cost sharing under the proposed formula and about 3,100 families will have a liability for a cost share.

Under the simplified payment system the Department is setting forth, the Department expects counties' costs to administer the payment system to decline as the number of forms and required calculations should be significantly reduced. The Department projects that the rule changes will increase the revenues generated by counties, in total, due to the fact that more families will have a parental cost share and more counties will be participating in the parental cost share system. However, individual counties having relatively lower per capita incomes may not experience significant revenue increases.

**Publication Date:** September 26, 2001  
**Effective Date:** October 1, 2001  
**Expiration Date:** February 28, 2002

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## Health & Family Services

### (Health, Chs. HFS 110—)

Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk-Sharing Plan (HIRSP).

#### Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. These are the emergency rules. Department staff consulted with the Health Insurance Risk-Sharing Plan (HIRSP) Board of Governors on April 25, 2001 on the rules, as required by s. 149.20, Stats.

#### Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty-six percent of the 10,790 HIRSP policies in effect in March 2001, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rate increases for Plan 1 contained in this rulemaking order increase an average of 3.4%. Rate increases for specific

policyholders range from 0.0% to 4.9%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. This increase reflects industry-wide premium increases and takes into account the increase in costs associated with Plan 1 claims. According to state law, HIRSP premiums must fund 60% of plan costs and cannot be less than 150% of the amount an individual would be charged for a comparable policy in the private market.

A second type of medical coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a \$500 deductible. Fourteen percent of the 10,790 HIRSP policies in effect in March 2001, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 3.4%. Rate increases for specific policyholders range from 0.0% to 4.9%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. These rate increases reflect industry-wide cost increases.

The Department through this rulemaking order proposes to amend ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 2000. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2001. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$19,982,024. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$19,617,772. On April 25, 2001, the HIRSP Board of Governors approved the calendar year 2000 reconciliation process and the HIRSP budget for the plan year July 1, 2001 through June 30, 2002.

The fiscal changes contained in this order also reflect the conversion of HIRSP from cash accounting to accrual accounting, as recommended by the Legislative Audit Bureau and the HIRSP Board of Governors. Cash accounting recognizes the costs of claims and expenses when paid. Accrual accounting recognizes the costs of claims and expenses in the time period when first incurred. Basically, HIRSP program liabilities have been understated under the cash accounting methodology. The net effect of the HIRSP conversion to accrual accounting is to provide a more accurate reflection of the program's financial condition.

**Publication Date:** June 29, 2001  
**Effective Date:** July 1, 2001  
**Expiration Date:** November 28, 2001  
**Hearing Date:** July 31, 2001

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## Natural Resources – (3)

### (Fish, Game, etc., Chs. NR 1–)

- Rules adopted amending s. NR 20.20 (73) (j) 1. and 2., relating to sport fishing for yellow perch in Green Bay and its tributaries and s. NR 25.06 (2) (b) 1., relating to commercial fishing for yellow perch in Green Bay.

#### Finding of emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

Yellow perch contribute significantly to the welfare of Wisconsin citizens by supporting popular and economically valuable sport and commercial fisheries. The yellow perch population in Green Bay is rapidly declining. This decline reflects a number of years of very poor reproduction. The only recent year with reasonably good natural reproduction was 1998. The fish spawned that year contributed to the sport harvest in 2001 and will become vulnerable to commercial gear this summer. Sport and commercial harvests of adult yellow perch must be limited immediately in order to protect those fish and maximize the probability of good reproduction in the near future.

**Publication Date:** June 30, 2001  
**Effective Date:** July 1, 2001  
**Expiration Date:** November 28, 2001  
**Hearing Date:** August 13, 2001

- Rules adopted revising ch. NR 10, pertaining to deer hunting in various deer management units.

#### Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial deer damage to agricultural lands and forest resources, and to minimize deer nuisance problems, thereby protecting the public peace, health, safety and welfare. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify the rules will result in excessively high deer populations well above established goal levels, causing substantial deer damage to agricultural lands and forest resources, and potential for disease.

**Publication Date:** May 16, 2001  
**Effective Date:** September 1, 2001  
**Expiration Date:** January 29, 2002  
**Hearing Date:** June 11, 2001

- Rules adopted revising ch. NR 10, relating to the 2001 migratory game bird season.

#### Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations

in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule–making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

**Publication Date:** August 29, 2001  
**Effective Date:** September 1, 2001  
**Expiration Date:** January 29, 2002  
**Hearing Date:** October 11, 2001

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### **Volunteer Fire Fighter and Emergency Medical Technician Service Award Board**

Rules adopted creating ch. VFF–EMT 1, relating to the length of service award program.

#### **Exemption from finding of emergency**

(Section 10 (3) (a), 1999 Wis. Act 105.)

#### **Analysis prepared by the Department of Administration:**

Statutory authority: ss. 16.004 (1) and 16.25 (2), (3), (4) and (5), Stats.

Statutes interpreted: s. 16.25 *et seq.*, Stats.

Pursuant to section 16.25 (2) through (5), Stats., the Volunteer Fire Fighter and Emergency Medical Technician Service Award Board (“Board”) is required to establish by rule a program (“Length of Service Awards Program” or “Program”) to provide length of service awards, as described in 26 USC 457 (e) (11), to volunteer firefighters (“VFF”) and municipalities that operate volunteer fire departments or contract with volunteer fire companies, and to volunteer emergency medical technicians (“EMT”). To the extent permitted by federal law, the Program is to be designed to treat length of service awards as a tax–deferred benefit under the Internal Revenue Code. The rules are to include design features for the Program, the requirements for and the qualifications of private sector entities that are eligible to provide administrative services and investment plans under the Program, and an appeal. Significant features of the rule are addressed below:

Section VFF–EMT 1.04 describes eligibility requirements for municipalities wishing to participate in the program, such as adopting a resolution or ordinance authorizing participation, developing standards for determining the service required of the individuals it sponsors in order to qualify for municipal contributions and providing for circumstances where municipalities wish to jointly operate, or contract with, the same volunteer fire department or volunteer fire company.

Section VFF–EMT 1.05 sets forth requirements and procedures for municipal contributions made on behalf of eligible volunteers, and for the state’s matching contribution (up to \$250 per eligible individual annually).

Section VFF–EMT 1.06 sets forth the parameters for municipal contributions for prior service rendered before the municipality began participating in the Program. The minimum contribution for prior service is set at \$100, and those contributions may spread over a number of years. A

separate accounting is required for these prior service payments.

Section VFF–EMT 1.07 sets forth the Program’s vesting requirements and the various permutations possible between full and partial vesting periods and the minimum age requirement (age 60) for payout. Section VFF–EMT 1.07 (1) establishes that 20 years service is required to fully vest and, upon reaching age 60, the award must be paid. (This requirement insures that the benefit maintains its tax deferred status.) Section VFF–EMT 1.07 (2) provides that a fully vested individual age 60 or older may continue to provide service toward a new length of service award under a new account but, for IRS rule purposes, contributions must be paid immediately and cannot accumulate. Section VFF–EMT 1.07 (3) provides for partial vesting after 10 years’ service. Should the individual perform more than 10 but less than 20 years’ service, upon reaching age 60, he or she will receive only 50% of the net asset value of the benefit account for the first 10 years of service rendered, and an additional 5% for each year thereafter, up to 19 years. Section VFF–EMT 1.07 (7) allows an individual to provide simultaneous service to two or more separate municipalities but, in such cases, only one year of service credit may be earned.

Section VFF–EMT 1.09 details the notice and procedure for when a VFF–EMT ceases performing service for one participating municipality and begins performing service for another municipality, which utilizes a different program administrator or vendor. Such a transfer is allowed, but the account will be frozen and a new one started with the new program administrator. However, any accumulated years of credited service will continue to count toward the vesting requirements. Section VFF–EMT 1.10 allows for benefits to be received both upon disability, or to the beneficiaries upon death of the VFF–EMT.

Section VFF–EMT 1.12 sets forth minimum program administrator qualifications. These include five years of experience providing a length of service award program, adequate marketing and enrollment services capabilities, various accounting and record keeping procedures and abilities, membership in good standing in various organizations customary in the program administrator’s or investment manager’s industry that provides protection against loss, and overall financial strength.

Section VFF–EMT 1.13 provides for the administration of plans offered by a program administrator under a contract with the Board, and standard provisions to be included. These include compliance with all pertinent state and federal statutes, rules and regulations, mandatory full disclosure to the Board of all fees and commissions earned directly and indirectly on the operations of the program, audits, and data processing system failure and administrative service interruption contingency plans. Also important are the required annual statements to participating municipalities and the individuals they sponsor, detailing all contributions made and the fees commissions, and charges paid that affect the individual’s account.

Section VFF–EMT 1.17 provides for a two–step appeals process in which a VFF–EMT may first protest service credit issues to the participating municipality, which may consult with the program administrator. Any decision of the municipality may be reviewed at the Board’s discretion. An individual who has a substantial interest affected by a Board decision may appeal directly in writing to the Board. All Board decisions are final.

**Publication Date:** September 21, 2001  
**Effective Date:** September 21, 2001  
**Expiration Date:** February 18, 2001

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## Scope statements

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### Chiropractic Examining Board

#### Subject

To permit approved continuing education courses in chiropractic to include material on chiropractic philosophy.

#### Policy analysis

*Objective of the Rule.* To broaden the categories of continuing education programs that can be approved to meet the requirements for the chiropractic profession.

Current rules regulating the approval of continuing education courses for the chiropractic profession restrict credit to program subject matter that relates to improving clinical skills. The board wishes to remove or modify this restriction.

#### Statutory authority

Sections 15.08 (5) (b) and 227.11 (2), Stats.

#### Staff time required

100 hours.

### Natural Resources

#### Subject

Fishing regulation changes for the 2002 Spring Fish and Wildlife Rules Hearings.

#### Policy analysis

Not known at this time.

#### Statutory authority

Section 29.014, Stats.

#### Staff time required

222 hours.

### Natural Resources

#### Subject

Recycling efficiency incentive grants.

#### Policy analysis

The policy issues include what criteria must a municipality meet in order to receive a grant, what method should be used to determine the grant amount and how to determine if the program is successful.

#### Statutory authority

Statutory Authority: s. 287.235, Stats.

#### Staff time required

Over 600 hours will be needed by the Department.

### Natural Resources

#### Subject

Amending a rule to modify the sturgeon spearing season and change the registration deadline from 6:00 p.m. to 1:00 p.m.

#### Policy analysis

Another record level and record increase in spearer effort in 2001 resulted in a harvest of adult female sturgeon 48% over the allowable safe harvest cap. The harvest bubbled over again due to a faster than anticipated increase in spearer numbers, especially those taking advantage of the “free” Conservation Patron tag. This proposed rule should slow the daily harvest rate down and at least temporarily reduce the risk of going over the harvest cap. This rule would buy the additional time needed for the Sturgeon Advisory Committee and Department staff to develop the next generation of sturgeon spearing rule and/or statute change proposals to cope with the rising spearing pressure and harvest. A permanent proposal will be developed by the Sturgeon Advisory Committee and Department staff working with the general public for submission into the rule and/or statute change process over the next year. The Sturgeon Advisory Committee has already met to discuss these issues and have discussed a number of options including increasing license fees, removing the spearing tag from the Conservation Patron license, decreasing the spearing hours each day, instituting an early license sales deadline, holding a lottery and creating closed areas.

#### Statutory authority

Section 29.014, Stats.

#### Staff time required

Approximately 90 hours will be needed by the Department.

### Natural Resources

#### Subject

Hunting and trapping regulations for the April 2002 spring hearings.

#### Policy analysis

The Department is proposing removing Blackhawk Lake Wildlife Area from the list of properties where hunting hen pheasants is allowed; increasing the goal in bear management zone “C” from 800 to 1,200 animals; changing the timeframe for registering bow killed deer after the close of the bow hunting segment; and establishing a fall turkey hunting season at Mill Bluff State Park.

#### Statutory authority

Section 29.014, Stats.

#### Staff time required

Approximately 200 hours will be needed by the Department.

### Natural Resources

#### Subject

Hunting and trapping regulations annual housekeeping order.

#### Policy analysis

The Department is proposing defining “explosive tips” pertaining to archery hunting; updating the names of wildlife properties which allow hunting of hen pheasants; eliminating the requirement that group applicants submit all applications

in a single envelop; extending the deadline for submitting Class A bear license fees to April 15; clarifying the trapping hours; shortening the number of days needed before the daily number of pheasant hunting permits may exceed 300 and change the time of day at which this number can be exceeded and increasing the pheasant daily bag limit from one either sex during the first 14 days of the season to 2 either sex starting the third day of the season at the Bong State Recreation Area Hunting Zone; eliminating the requirement that state waterfowl and turkey stamps must be attached to a person's hunting license when hunting; adding a map of Deer Management Unit 1M to the list of metropolitan deer management units; repealing language regarding commercial deer farms that was made obsolete due to statutory changes; and correcting inaccurate citations.

#### **Statutory authority**

Section 29.014, Stats.

#### **Staff time required**

Approximately 200 hours will be needed by the Department.

### **Natural Resources**

#### **Subject**

Section NR 47.75 pertaining to the sustainable forestry grant program and s. NR 47.903 (3) and (6) pertaining to the forest fire protection grant program.

#### **Policy analysis**

The proposed sustainable forestry grant rule would affect and be of interest to those counties currently enrolled in the county forest program (s. 28.11 (8) (b) 2., Stats.) and which apply for the sustainable forestry grant program. The 2001–03 budget awarded a continuing appropriation of \$200,000 to be provided annually to the county forests to be used to advance sustainable forestry on county forest property. The rule would define purpose, eligibility, application procedures, selection criteria, audit procedures and general provisions for the sustainable forestry grant program. The new grant program would promote sustainable forestry by funding implementation of forestry practices targeted at improving sustainable forestry on county forest lands. It is anticipated that the funding could be used by counties to contract with private forestry consulting firms or hire limited term employees to complete the sustainable forestry projects. The proposed rule reemphasizes the Department's commitment to sustainable forestry and our partnership in Wisconsin's county forests. This request is for permission to develop rules for the new grant program. If the rule process goes beyond this fiscal year, the Natural Resources Board may be asked to implement rules drafted and approved by it following public input by an emergency rule process.

The two changes to the forest fire protection grant program would affect and be of interest to municipal fire departments and fire suppression organizations. The proposed rule will move the forest fire protection grant application deadline from October 1 to July 1 to accommodate better the budgeting process of the calendar fiscal year that most municipalities use. The second rule change would allow a grantee to begin work on its project after the DNR signs, but prior to the grantee signing the grant agreement. Changes in the forest fire protection grant program are being proposed upon recommendation of the DNR Fire Department Advisory

Council and the DNR's professional grant managers in the Bureau of Community Financial Assistance.

#### **Statutory authority**

Sections 26.145, 28.11 (5) (r) and 227.11, Stats.

#### **Staff time required**

Approximately 80 hours will be needed by the Department.

### **Psychology Examining Board**

#### **Subject**

*Objective of the proposed rule.* To conform an existing rule to existing practice.

#### **Policy analysis**

Currently, s. Psy 2.02 requires that the board schedule examinations on the professional practice of psychology at least twice a year. Examinations are now administered by computer. The proposed rule change would eliminate a lengthy lead time prior to the examination that was needed when the examination was administered and scored manually. The same rule requires an applicant to complete all application materials "before the first of the month immediately prior to" a board meeting before taking the examination on the elements of practice essential to the public health, safety or welfare. Since the board meets on a different date each month, another proposed rule change would make the lead time for this requirement easier to administer.

#### **Statutory authority**

Sections 15.08 (5) (b) and 227.11 (2), Stats.

#### **Staff time required**

80 hours.

### **Public Service Commission**

#### **Subject**

The proposed rule would establish new interconnection standards for customer-owned distributed generation facilities as specified by s. 196.496, Stats.

#### **Policy analysis**

In December 2000, the Commission made the following recommendations to the Legislature as part of its report on the development of distributed generation (DG) in the State of Wisconsin:

Establish a collaborative group of DG stakeholders to develop recommendations as needed.

Establish uniform, simplified standards based on IEEE 929 and IEEE P1547.

Establish a statewide, standardized contract for DG systems.

Establish statewide precertification and standardized testing.

Require all interconnected DG units be registered with both the affected utility and the commission.

In response to these recommendations the Legislature enacted s. 196.496, Stats., as part of 2001 Wis. Act 16. The act defines "distributed generation facility" as a facility for the generation of electricity with a capacity of up to 15 megawatts that is located near the point where the electricity will be used, or is in a location that will support the functioning of the electric power distribution grid. The act requires the Commission to promulgate rules that are "uniform and promote the development of distributed generation and address engineering, electric reliability, safety concerns and the methods for determining charges for interconnection."

The objective of the rules will be to establish requirements that are, to the extent technically feasible and cost effective, uniform for all regulated electric utilities in Wisconsin. The rules will define an application process, an application form, an interconnection agreement and requirements for issue such as grounding, metering, use of certified or non–certified equipment, safety equipment, power quality, testing, as well as compliance with applicable national, state, and local codes. The rules will include a streamlined application process for facilities less than 20 kilowatts.

The rules will be developed with the advice of a committee created under s. 227.13, Stats., and will establish a new chapter in the PSC section of the Wisconsin Administrative Code.

#### **Statutory authority**

Sections 196.496 and 227.13 (2), Stats.

#### **Staff time required**

The Commission estimates that approximately 450 hours of employee time will be required to establish the interconnection rules.

## **Revenue**

#### **Subject**

Sections Tax 2.08 (returns relating to income of persons other than corporations) and 11.01 (sales and use tax returns). *Objective of the proposed rule.*

The objectives of the proposed rule are to:

- Permit the Department to require that certain returns relating to income of persons other than corporations and certain sales and use tax returns be filed by electronic means.
- Delete references to obsolete forms.
- List new or previously unlisted forms.
- Update or correct information relating to certain forms.
- Update information relating to methods by which returns may be submitted to the Department.

#### **Policy analysis**

Existing policies are as set forth in the rules.

In addition, a new policy is being proposed, whereby the department may require that certain returns be filed by electronic means, as authorized under 1997 Wis. Act 27.

If the rules are not changed, they will be incorrect in that they will not reflect current law, or current or proposed Department policy.

#### **Statutory authority**

Sections 71.80 (1) (c) and 227.11 (2) (a), Stats.

#### **Staff time required**

The department estimates it will take approximately 80 hours to develop this rule order

## **Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board**

#### **Subject**

To obtain information regarding arrests and convictions from initial applicants and renewal applicants, including applicants for training certificates, for all levels of certification for all sections of the board.

*Objective of the Rule.* Information regarding convictions or pending charges is important to the decision to certify or

recertify social workers, marriage and family therapists and professional counselors, to insure the protection of the public.

#### **Policy analysis**

The proposed rule changes would require applicants to supply information regarding convictions and pending charges. Any such information would then have to be reviewed to determine whether it is substantially related to the practice of social work, marriage and family therapy or professional counseling.

#### **Statutory authority**

Sections 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats.

#### **Staff time required**

80 hours.

## **Wisconsin Emergency Management**

#### **Subject**

Chapters WEM 4, and 6, relating to reimbursement procedures for regional and local emergency response teams and the hazardous materials transportation registration program.

#### **Policy analysis**

Description of policy issues to be resolved, including groups likely to be impacted or interested in this issue.

The recently passed budget, 2001 Wisconsin Act 16 included language to allow for reimbursement of emergency response costs for potential releases of hazardous materials. This rule change would modify WEM 6 so that reimbursement procedures apply to both actual releases and potential releases of hazardous materials. It would require regional and local response team to utilize an agency approved response matrix to be eligible for reimbursement under WEM 6 and would establish limits for reimbursement of potential releases. The proposed change would also clarify that administrative costs are eligible for reimbursement and that recovered costs would be placed in the regional emergency response reimbursement appropriation under 20.465 (3)(jt). The statutory authority for WEM 4, relating to a hazardous material transportation and registration form no longer exists and this proposal repeals WEM 4 in its entirety.

Groups likely to be interested in the rule include regional and local emergency response teams, Local Emergency Planning Committees, county emergency management offices, fire departments, hazardous materials transporters and offerors.

#### **Statutory authority**

Sections 166.20 (2) (a), (b), (bs), (bm), 166.215 (2), (3), 166.22 (2), (3), (3m), (4), (5) (b), and 227.11 (2) (a), Stats.

#### **Staff time required**

100 hours.

## **Workforce Development**

#### **Subject**

Child Care

#### **Policy analysis**

*Objective of the rule.* In consultation with county certification workers, the department will review and update the certification requirements for child care providers. Changes will include a training requirement on sudden infant death syndrome, increased safety requirements for swimming

pools at day care facilities, a restriction on inappropriate disciplinary techniques, and increased requirements for varied activities that support positive child development.

The department will also review and update the rules on administration of child care funds. Changes will allow the cancellation of existing child care authorizations if the provider has been found in violation of certification rules, allow authorization to licensed providers based on attendance if the local agency has documented 3 separate occasions where the provider overreported the attendance of a child, allow a county or tribal agency to set separate maximum

county rates for the age groups specified by the department, require providers to cooperate with monitoring or program review activities, and require providers to verify attendance reports with a record signed by the parent showing the times the child was dropped off and picked up each day the child is reported as being in care.

**Statutory authority**

Sections 49.155 and 227.11, Stats.

**Staff time required**

100 hours

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## Submittal of rules to legislative council clearinghouse

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*Please check the Bulletin of Proceedings for further information on a particular rule.*

### Agriculture, Trade and Consumer Protection

#### Rule Submittal Date

On October 31, 2001, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: s. 227.15, Stats.

The proposed rule–making order relates to dairy plants, ch. ATCP 69, 77 and 80.

#### Agency Procedure for Promulgation

The department will hold public hearings on this rule after the Rules Clearinghouse completes its review. Hearings are scheduled for November 29, December 4, 5 and 6, 2001.

#### Contact Person

Byron Dennison, (608) 224–4715.

### Agriculture, Trade and Consumer Protection

#### Rule Submittal Date

On October 31, 2001, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: s. 227.15, Stats.

The proposed rule–making order relates to dairy farms, ch. ATCP 60.

#### Agency Procedure for Promulgation

The department will hold public hearings on this rule after the Rules Clearinghouse completes its review. Hearings are scheduled for November 29, December 4, 5 and 6, 2001.

#### Contact Person

Byron Dennison, (608) 224–4715.

### Commerce

#### Rule Submittal Date

On October 31, 2001, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: ss. 227.14 (4m) and 227.17, Stats.

The proposed rule–making order relates to sections Comm 95.04 and 95.05, Stats., relating to mobile home park permit fees.

#### Agency Procedure for Promulgation

A public hearing is required and is scheduled for November 27, 2001.

#### Contact Person

Larry Swaziek, (608) 267–7701.

### Financial Institutions

#### Rule Submittal Date

On October 24, 2001, the Department of Financial Institutions submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: s. 227.14 (4m), Stats.

The proposed rule–making order relates to implementation of the Wisconsin Uniform Commercial Code and operation of a lien filing system.

#### Agency Procedure for Promulgation

A hearing on these rules will be held December 3, 2001.

#### Contact Person

Ray Allen, Administrator, Division of Corporate and Consumer Services, (608) 264–9566.

### Transportation

#### Rule Submittal Date

On October 17, 2001, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: s. 227.14 (4m), Stats.

The proposed rule–making order relates to ch. Trans 131, vehicle emissions inspections.

#### Agency Procedure for Promulgation

A hearing is not required.

#### Contact Person

Julie A. Johnson, Paralegal, 266–8810.

### Volunteer Fire Fighter and Emergency Medical Technician Service Award Board

#### Rule Submittal Date

On October 25, 2001, the Department of Administration submitted a proposed rule, ch. VFF–EMT 1, to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: ss. 16.004 (1) and 16.25 (2), (3), (4) and (5), Stats.

Statute Interpreted: s. 16.25, et seq., Stats.

The proposed rule establishes a program to provide length of service awards, as described in 26 USC 457 (e) (11), to volunteer fire fighters and municipalities that operate volunteer fire departments or contract with volunteer fire companies, and to volunteer emergency medical technicians. The proposed rule provides the design features of the program, the requirements for and the qualifications of private sector entities that are

eligible to provide administrative services and investment plans under the Program, and an appeal process.

An emergency rule that is identical to this proposed rule became effective on September 21, 2001.

**Agency Procedure for Promulgation**

A public hearing is required and will be scheduled at a later time.

**Contact Person**

The Volunteer Fire Fighter and Emergency Medical Technician Service Award Board is primarily responsible for preparing the proposed rule.

If you have any questions regarding this rule, please contact:

Donna Sorenson  
Department of Administration  
Telephone (608) 266–2887

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## Rule–making notices

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### Notice of Hearings

#### Agriculture, Trade and Consumer Protection [CR 01–124]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on all the following:

- A rule relating to dairy plants and cheesemakers. This rule modifies chs. ATCP 80 and 69, Wis. Adm. Code.
- A temporary emergency rule requiring DATCP approval of laboratory analysts who visually read drug residue screening tests on milk. This emergency rule modifies ch. ATCP 77, Wis. Adm. Code. DATCP will charge laboratories a fee to cover the cost of evaluating analysts. DATCP adopted this temporary emergency rule effective November 15, 2001.
- A proposal to adopt the above emergency rule as a “permanent” rule. DATCP proposes to do this by incorporating the emergency rule provisions with its “permanent” rules related to dairy plants and cheesemakers (see above).

DATCP will hold four hearings at the time and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rules. Following the public hearing, the hearing record will remain open until December 15, 2001, for additional written comments.

You may obtain a free copy of these rules by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224–4700. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearing. Please make reservations for a hearing interpreter by **November 23, 2001**, by writing to Debbie Mazanec, Division of Food Safety, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4712. Alternatively, you may contact the department TDD at (608) 224–5058. Handicap access is available at the hearings.

#### Hearings are scheduled:

**Thursday, November 29, 2000**, 9:30 a.m. until 12:30 p.m.

WDATCP Eau Claire Regional Office  
3610 Oakwood Hills Parkway  
Eau Claire, WI 54701–7754  
Handicapped accessible

**Tuesday, December 4, 2001**, 9:30 a.m. until 12:30 p.m.

Appleton Public Library  
Lower Level Meeting Room  
925 So. Oneida Street  
Appleton, WI 54911  
Handicapped accessible

**Wednesday, December 5, 2001**, 9:30 a.m. until 12:30 p.m.

Green County Agriculture Bldg.  
2841 6<sup>th</sup> Street  
Monroe WI 53566  
Handicapped accessible

**Thursday, December 6, 2001**, 9:30 a.m. until 12:30 p.m.

U. W. Pyle Center

702 Langdon Street

Madison, WI 53706

Handicapped accessible

The hearing in Madison on Thursday, December 6, 2001, will have videoconference connections with three additional locations. The public may participate in the hearing by testifying or registering an appearance at any of the four sites, and see as well as listen to testimony from other persons at all of the sites. Videoconference connections will be available from 9:30 a.m. until 12:30 p.m. at the following locations:

- LaCrosse State Office Building, Room B–29

3550 Morman Coulee Road

LaCrosse WI 54601

Handicapped accessible

- Wisconsin Rapids State Office Building

2610 Industrial Street, Conference Room #4

Wisconsin Rapids WI 54495

Handicapped accessible

- University of Wisconsin – Green Bay

Instructional Services Bldg. Room #1034

Green Bay, WI 54311

Handicapped accessible

#### Text of Rule

ATCP 80 and 69 (Proposed Rule)

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07 (1), 97.09 (4), 97.20 (4), 97.22 (8), 97.24 (3) and 97.52, Stats.

Statutes interpreted: ss. 93.06 (7) and (8), 97.02, 97.03, 97.12, 97.20, 97.22 to 97.24, 97.50 and 97.52, Stats.

#### Overview

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) regulates dairy plants to protect consumers and facilitate interstate shipment of Wisconsin dairy products. This rule updates current dairy plant rules under chs. ATCP 69 and 80, Wis. Adm. Code. Among other things, this rule:

Establishes alternative training options for persons who wish to be licensed as cheesemakers.

Updates current standards for dairy plant facilities.

Authorizes a dairy plant operator to use reclaimed water for dairy plant operations, subject to specified conditions.

Clarifies a dairy plant operator’s responsibilities related to the receipt of raw milk from dairy farms.

Modifies current dairy product temperature standards.

Modifies current standards for bacteria and coliform in pasteurized dairy products.

Modifies current restrictions related to the reprocessing of packaged dairy products returned to a dairy plant.

Updates current pasteurization standards, and establishes standards for higher–heat shorter–time (HHST) pasteurizers.

Updates current pasteurization record keeping requirements. Among other things, this rule clarifies record keeping requirements related to high–temperature short–time (HTST) and higher–heat shorter–time (HHST) pasteurization.

Updates current standards related to dairy product fortification, dairy product test methods, and grade A audit surveys.

Makes other drafting and organizational changes to update and clarify current rules.

### Background

DATCP currently licenses and inspects dairy plants under s. 97.20, Stats., and ch. ATCP 80, Wis. Adm. Code. DATCP licenses individual cheesemakers under s. 97.17, Stats., and ch. ATCP 69, Wis. Adm. Code. Dairy plants processing grade A fluid milk products must hold a grade A permit from DATCP. Dairy plants also have important responsibilities related to dairy farm milk procurement under ch. ATCP 60, Wis. Adm. Code.

All dairy products must be produced under sanitary conditions. Dairy plants producing grade A fluid milk products must also comply with the interstate Pasteurized Milk Ordinance (PMO). Failure to comply with PMO requirements may jeopardize the interstate shipment of Wisconsin dairy products. Current DATCP rules establish standards for all dairy plants, including grade A dairy plants. DATCP rules incorporate PMO standards.

Current DATCP rules spell out requirements related to:

- Dairy plant licensing and fees.
- Dairy plant facilities and operations.
- Dairy product quality standards and testing.
- Pasteurization of dairy products.
- Dairy plant records and reports.
- Inspection and enforcement.
- Cheesemaker license qualifications.

### Rule Contents

#### Cheesemaker License Qualifications

Under current rules, individuals must meet certain training and experience requirements in order to be licensed as cheesemakers. Under current rules, an individual may be licensed if the individual does any of the following:

Completes an 18–month apprenticeship under a licensed cheesemaker.

Completes a 12–month apprenticeship, and either completes a university short course in cheesemaking or obtains a dairy–related associate degree at a vocational school.

Completes a 6–month apprenticeship and obtains a 4–year dairy–related college degree.

This rule creates another option for license applicants. Under this rule, an individual may be licensed as a cheesemaker if the individual completes a 240–hour apprenticeship, and completes DATCP–approved courses in all the following:

- Cheesemaking.
- Production of safe dairy foods
- Hazard analysis critical control point (HAACP) process control.
- Milk pasteurization.
- Dairy sanitation.

DATCP may license the individual on a conditional basis, and may summarily suspend the license if the license holder fails to meet continuing education and performance standards.

#### Fluid Milk Products

Fluid milk products must be produced by grade A dairy plants, according to grade A standards. This rule updates the

current “fluid milk product” definitions to conform to the interstate Pasteurized Milk Ordinance (PMO).

#### Dairy Plant Rooms

This rule clarifies, but does not substantially alter, current rules related to room separation in dairy plants. Certain activities must be separated from other activities to prevent contamination of dairy products.

#### Re–circulated Water; Testing

Under current rules, re–circulated water used in a dairy plant cooler or heat exchanger must be tested semi–annually by DATCP. This rule requires the dairy plant operator, not DATCP, to test semi–annually.

#### Reclaimed Water

This rule clarifies spells out standards for a dairy plant’s use of water reclaimed from the condensation of milk or dairy products. The standards are designed to prevent dairy product contamination that may result from the improper use of reclaimed water. Under this rule:

- A dairy plant operator may use water reclaimed by means of evaporation, reverse osmosis or ultrafiltration. The water must meet different standards, depending on how it is used.
- Reclaimed water may not be used for any purpose requiring *potable* water unless all the following apply:
  - DATCP pre–inspects and pre–approves the reclamation system.
  - The reclaimed water is free of coliform bacteria.
  - The standard plate count of the reclaimed water does not exceed 500 per ml. and meets DNR bacteriological standards.
  - The organic content of the reclaimed water is less than 12 mg. per liter.
  - The reclaimed water has no off–odors, off–flavors or slime formations. The dairy plant operator must check these things weekly.
  - DATCP pre–approves any chemicals used to suppress bacterial growth, tastes or odors in the reclaimed water. Automatic proportioning devices must be used to add chemicals to the water. The dairy plant operator must test at least daily for chemical content. Chemicals may not contain substances that may contaminate dairy products.
  - The reclaimed water is stored in properly constructed tanks.
  - The dairy plant operator tests the reclaimed water for bacteriological and organic content at least semi–annually, and more often after the reclamation system is initially installed or repaired.
  - There are no cross–connections between reclaimed water lines and any public or private water system.
- Reclaimed water may be used for the limited purposes of producing culinary steam, pre–rinsing food contact surfaces of equipment or utensils, or preparing cleaning solutions if all the following apply:
  - The reclaimed water meets all potable water standards, other than bacteriological standards.
  - The reclaimed water is used only on the day that it is reclaimed.
  - The reclaimed water is automatically maintained at a temperature of not less than 145° F., or is chemically treated to suppress bacterial propagation. Chemical treatments must comply with standards for potable water.
  - Distribution lines and hose stations used to distribute the reclaimed water are clearly identified as “**limited–use reclaimed water.**”
  - The dairy plant operator posts clear instructions for the use of the reclaimed water. The instructions must limit the purposes for which the reclaimed water may be used.

– Water lines distributing the reclaimed water are not permanently connected to dairy product vessels. Temporary connections must be protected to avoid product contamination.

- Reclaimed water that does not qualify for any of the above uses may only be used as boiler feed water.

#### **Dairy Plant Personnel; Sanitation**

Under current rules, persons with discharging or infected lesions on their hands or arms may not handle unpackaged dairy products. This rule prohibits them from handling unpackaged dairy products unless they have appropriate sanitary protection (including bandages and gloves) specified in this rule.

#### **Equipment and Utensils**

Current rules spell out sanitary design and construction requirements for dairy plant equipment and utensils. The current rules incorporate, by reference, “3–A” technical standards published by FDA and the International Association for Food Protection.

Under current rules, persons installing C–I–P (cleaned in place) systems must submit plans for DATCP approval. This rule requires the dairy plant operator, not the installer, to submit the plans. DATCP must act on the plans within 20 business days (currently 30 calendar days).

This rule regulates the use of flexible pipelines in dairy plants, to prevent sanitation hazards. Dairy plant operators may use flexible pipelines, subject to conditions specified in this rule, if rigid pipelines are impractical. This rule also modifies current standards for chlorine sanitizers used to sanitize equipment and utensils.

#### **Milk from Dairy Farms**

This rule clarifies a dairy plant operator’s responsibilities related to the receipt of raw milk from dairy farms. A dairy plant operator may not collect or receive milk from a dairy farm unless all the following apply:

- The dairy farm is properly licensed.
- A licensed milk weigher and sampler collects a sample of the producer’s milk (for milk quality testing), and measures and records the temperature and quantity of the producer’s milk.
- The operator complies with applicable milk testing and follow–up requirements under ch. ATCP 60 (dairy farms).

#### **Bulk Milk Tanker Deliveries**

Current rules prohibit a dairy plant operator from receiving a grade A bulk milk tanker delivery unless the bulk milk tanker operator holds a grade A permit for that tanker. This rule also prohibits a dairy plant operator from receiving any bulk milk tanker delivery unless the tanker operator holds a bulk milk tanker license under s. 97.21 (2) (a), Stats., and ch. ATCP 82.

#### **Product Temperature**

Current rules require dairy plant operators to keep dairy products above or below specified temperatures, to prevent hazardous bacterial growth. This rule modifies some of these current temperature requirements.

- Under current rules, an operator who receives raw grade B milk or grade B dairy products for processing must keep those dairy products at 50° F. or less until they are pasteurized. Under this rule, the operator must keep those grade B dairy products at 45° or less until they are pasteurized (the same temperature currently required for grade A products). There is an exemption for milk received within 2 hours of milking, provided the milk is pasteurized or cooled to 45° within 4 hours.

- Under current rules, a dairy plant operator may not hold milk or dairy products for more than 4 hours at a temperature that is between 45° F. and 140° F. Certain dairy products are currently exempt. This rule adds some limited exemptions.

- Under current rules, dairy plant operators must keep certain non–dairy foods (including certain dairy product ingredients) at “safe temperatures” to prevent hazardous bacterial growth. This rule establishes new “safe temperature” requirements for these non–dairy foods, as follows:

- For refrigerated foods: 41° F. (currently 40° F.)
- For heated foods: 140° F. (currently 150° F.)
- For frozen foods: 0° F. (same as now)

#### **Reprocessing Returned Products**

Current rules prohibit a dairy plant operator from reprocessing *grade A* packaged dairy products returned to a dairy plant. There are certain exemptions. This rule prohibits a dairy plant operator from reprocessing *any* packaged dairy products (not just grade A products) returned to the dairy plant, except that it does not prohibit any of the following:

The use, as ingredients, of packaged dairy products that are specifically manufactured and packaged for use as ingredients in other dairy products.

Reprocessing packaged dry milk and dry milk products, if the inner package is intact.

Reprocessing packaged cheese or butter returned for failure to meet grade or color standards, if the inner package is intact and there is no evidence of product or temperature abuse.

Reprocessing dairy products collected from a packaging defoamer system, or drained from processing equipment at the end of a run, if the products are handled in a sanitary manner and repasteurized.

Reprocessing specifically authorized by DATCP in writing, under terms and conditions specified by DATCP.

#### **Bacteria, Coliform, Yeast and Mold**

This rule establishes more comprehensive bacteria and coliform standards for pasteurized dairy products. Under this rule, bacteria counts may not exceed 20,000 per ml. for most pasteurized dairy products. This standard does not apply to cultured dairy products (such as yogurt). Bacteria counts for the following products may not exceed the following levels:

30,000 per ml. for condensed milk, whey, dried whey and nonfat dry milk.

50,000 per gram for frozen desserts, except that the bacteria count for frozen dessert mixes may not exceed 20,000 per gram.

Under this rule, coliform counts in pasteurized dairy products may not exceed 10 per ml., except that coliform counts for pasteurized cheese, cheese products, butter and butter products may not exceed 100 per gram. If pasteurized cheese is manufactured from unpasteurized dairy products, its coliform count may not exceed 1,000 per gram.

Under this rule, the yeast and mold count in pasteurized cottage cheese may not exceed 10 per gram.

#### **Fortified Dairy Products**

This rule updates current standards for fortified dairy products. This rule incorporates the latest PMO standards (1999). DATCP will ask the Attorney General and the Revisor of Statutes for permission to incorporate these standards by reference in this rule.

#### **Milk Quality and Milk Component Test Methods**

This rule updates current milk quality and milk component test methods. Milk test methods must be those prescribed in “Standard Methods for the Examination of Dairy Products,”

16<sup>th</sup> edition (1992), or in the “Official Methods of Analysis of the Association of Analytical Chemists (AOAC) International, 17<sup>th</sup> edition (2000). DATCP will ask the Attorney General and the Revisor of Statutes for permission to incorporate the updated AOAC standards by reference in this rule. DATCP may approve other test methods.

#### **Pasteurization Standards**

This rule establishes standards for higher–heat shorter–time (HHST) pasteurizers, including minimum temperature and hold times. This rule also updates standards for conventional batch pasteurizers and high–temperature short–time (HTST) pasteurizers. HTST and HHST pasteurizers must meet technical standards published jointly by FDA, the International Association of Food Industry Suppliers and the International Association of Food Protection. DATCP will ask the Attorney General and the Revisor of Statutes for permission to incorporate the updated standards by reference in this rule.

DATCP periodically tests pasteurizers according to procedures specified in the PMO. This rule updates current procedures to meet current PMO standards. DATCP will ask the Attorney General and the Revisor of Statutes for permission to incorporate the updated PMO standards by reference in this rule.

When DATCP determines that a pasteurizer is operating correctly, it seals the pasteurizer to prevent alterations that might allow unpasteurized product to flow through the system. A dairy plant operator must immediately notify DATCP whenever a pasteurizer malfunctions or the operator breaks the seal (to repair a malfunctioning pasteurizer, for example). The dairy plant operator may not resume pasteurizer operations until certain safety requirements are met. This rule expands and clarifies those safety requirements. This rule extends, by 5 days, the current 5–day deadline for resealing the pasteurizer.

#### **Pasteurization Records**

This rule expands and updates current pasteurization record keeping requirements. Among other things it expands current record keeping requirements related to HTST and HHST pasteurization. Records must document that pasteurization met minimum standards designed to ensure dairy product safety.

#### **Dairy Plant Records**

Under current rules, a dairy plant operator must keep certain records and make those records available for inspection and copying by DATCP. This rule expands and clarifies current record keeping requirements. This rule:

Authorizes a dairy plant operator to keep cleaning and sanitizing records for C–I–P (“cleaned in place”) systems in electronic form, with or without a hard copy. Electronic records must be accessible by a DATCP inspector.

Requires a dairy plant operator to keep records related to vitamin fortification of fluid milk products, including inventory records and vitamin assay records.

#### **Grade A Audit Surveys**

Under the PMO, current state statutes and current DATCP rules, the Department of Health and Family Services (DHFS) must audit grade A dairy plants and dairy farms for compliance with PMO requirements. DHFS also audits DATCP’s compliance program for compliance with the PMO. This rule updates current audit standards to meet current PMO requirements. DATCP will ask the Attorney General and the Revisor of Statutes for permission to incorporate the updated PMO standards by reference in this rule.

#### **Drafting and Organizational Changes**

This rule makes a number of drafting and organizational changes to clarify and update current rules.

#### **ATCP 77 (Emergency Rule and Proposed Rule) Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection**

Statutory authority: ss. 93.07 (1) and 93.12 (3), (5) and (7), Stats., and s. 227.24, Stats. (emergency rule)

Statutes interpreted: ss. 93.12, Stats.

#### **Background**

The Department of Agriculture, Trade and Consumer Protection (DATCP) certifies laboratories that test milk, food and drinking water for compliance with public health standards. Laboratory certification helps ensure that public health lab tests are accurate and reliable. DATCP has adopted laboratory certification rules under ch. ATCP 77, Wis. Adm. Code.

Under current rules, DATCP certifies laboratories and approves analysts who conduct confirmatory drug residue tests on milk samples. But DATCP does not currently approve analysts who conduct “visual read” drug residue screening tests. The U. S. Food and Drug Administration (FDA), recently required states to approve laboratory analysts who conduct “visual read” screening tests. Analysts must be approved by March 1, 2002, or dairy plants may no longer be able to ship milk in interstate commerce.

This emergency rule implements the new FDA mandate. Under this emergency rule, DATCP will immediately begin to evaluate and approve analysts performing “visual read” screening tests, so that approvals will be in place by the March 1, 2002 deadline. DATCP will charge fees to cover the cost of the new program.

The emergency rule will expire after 150 days, unless extended. In order to continue the new program, DATCP also proposes to adopt the emergency rule as a “permanent” rule. This will ensure continued compliance with grade A interstate milk shipment requirements.

#### **Rule Contents**

Under this rule, analysts conducting drug residue screening tests on milk must be approved by DATCP. DATCP will evaluate and approve laboratory analysts who conduct “visual read” tests. DATCP will evaluate analysts who work for certified laboratories. Analysts at an approved laboratory will be authorized to conduct “visual read” tests for which the laboratory is also approved. Analysts will be approved to conduct those tests at that laboratory, but will not be approved to conduct the same tests at a different laboratory.

An approved laboratory may not employ unapproved analysts to conduct “visual read” tests. Before DATCP approves an analyst to perform a “visual read” test, DATCP will observe and evaluate the analyst’s competency to perform that test. An approval expires on December 31 of each year unless, by that date, the laboratory documents to DATCP that the analyst has completed an annual proficiency test and has correctly identified both positive and negative samples.

Under this rule, a laboratory conducting “visual read” drug residue screening tests must pay the following fees:

- \$500 for initial approval of up to 3 analysts, and \$25 for approval of each additional analyst during the same initial laboratory visit.
- \$150 for any subsequent visit to approve analysts, regardless of the number of analysts approved on that visit.

- \$100 for the annual renewal of analyst approvals. A \$100 annual renewal covers all analysts currently approved to perform milk drug residue screening tests at that laboratory.

No site visit is required for an annual renewal. An annual renewal does not cover new analysts, nor does it cover analysts performing tests that they have not yet been approved to perform.

### **Fiscal Estimate**

#### **ATCP 80 & 69**

The proposed rule to modify chs. ATCP and 69, Wis. Adm. Code, will not have a significant fiscal impact on DATCP or local units of government. This rule updates current food safety requirements, and accommodates recent changes in dairy plant operations. It also clarifies the responsibility of dairy plant operators with respect to milk procurement from dairy farms. It does not affect DATCP staffing or funding.

#### **ATCP 77**

The emergency rule and proposed rule related to DATCP approval of milk laboratory analysts under ATCP 77, Wis. Adm. Code, will have a fiscal impact on DATCP. Under this rule, DATCP staff must perform additional evaluations of lab analysts, and must process additional approvals and annual renewals. DATCP must conduct evaluations at approximately 30 laboratories throughout the state. DATCP will incur some overtime costs in order to complete initial approvals by March 1, 2002. DATCP anticipates that this program will cost approximately \$15,000 each year.

DATCP's laboratory certification program is entirely fee-funded. DATCP will not be able to absorb the additional costs, and will need to charge additional fees to cover the costs. Under this rule, a laboratory conducting "visual read" drug residue screening tests must pay the following fees:

- \$500 for initial approval of up to 3 analysts, and \$25 for approval of each additional analyst during the same initial laboratory visit.
- \$150 for any subsequent visit to approve analysts, regardless of the number of analysts approved on that visit.
- \$100 for the annual renewal of analyst approvals. A \$100 annual renewal covers all analysts currently approved to perform milk drug residue screening tests at that laboratory. No site visit is required for an annual renewal. An annual renewal does not cover new analysts, nor does it cover analysts performing tests that they have not yet been approved to perform.

DATCP estimates that these fees will generate approximately \$15,000 in new revenues each year. DATCP estimates that these revenues will be approximately commensurate with the additional costs that DATCP will incur to evaluate and approve lab analysts under this rule.

### **Initial Regulatory Flexibility Analysis**

#### **ATCP 80 & 69**

This rule applies to dairy plant operators, many of whom are "small businesses." This rule merely updates current rules and will not, in and of itself, have a major impact on small business. Much of this rule codifies federal requirements that Wisconsin processors must meet in order to ship milk and dairy products in interstate commerce. The rule will not add significant new costs, nor will it require dairy plants to retain additional professional services such as accounting or legal services.

#### **ATCP 77**

This rule affects milk testing laboratories, some of which are "small businesses." This rule requires DATCP approval of laboratory analysts performing "visual read" screening

tests for drug residues in milk. DATCP will charge fees to certified laboratories to cover the cost of evaluating and approving analysts. This will impose some additional costs on laboratories, but will help Wisconsin's dairy industry by facilitating sales of Wisconsin dairy products in interstate commerce.

Under this rule, a laboratory conducting "visual read" drug residue screening tests must pay the following fees:

- \$500 for initial approval of up to 3 analysts, and \$25 for approval of each additional analyst during the same initial laboratory visit.
- \$150 for any subsequent visit to approve analysts, regardless of the number of analysts approved on that visit.
- \$100 for the annual renewal of analyst approvals. A \$100 annual renewal covers all analysts currently approved to perform milk drug residue screening tests at that laboratory. No site visit is required for an annual renewal. An annual renewal does not cover new analysts, nor does it cover analysts performing tests that they have not yet been approved to perform.

An approval expires on December 31 of each year unless, by that date, the approved laboratory documents to DATCP that the analyst has completed an annual proficiency test and has correctly identified both positive and negative samples. This may require some laboratories to conduct and report proficiency tests that they are not now conducting. Laboratories currently have sufficient expertise to administer these proficiency tests to their analysts. No new equipment is required. This rule will not require laboratories to retain additional professional services, such as legal or accounting services.

## **Notice of Hearings**

### **Agriculture, Trade and Consumer Protection [CR 01–125]**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule to revise ch. ATCP 60, relating to dairy farm standards. The department will hold four hearings at the time and places shown below. The department invites the public to attend the hearings and comment on the proposed rules. Following the public hearing, the hearing record will remain open until December 15, 2001, for additional written comments.

You may obtain a free copy of these rules by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224–4700. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearing. Please make reservations for a hearing interpreter by November 23, 2001, by writing to Debbie Mazanec, Division of Food Safety, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4712. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearings.

#### **Hearings are scheduled at:**

**Thursday, November 29, 2000**, 9:30 a.m. until 12:30 p.m.  
DATCP Eau Claire Regional Office  
3610 Oakwood Hills Parkway  
Eau Claire, WI 54701–7754  
Handicapped accessible

**Tuesday, December 4, 2001**, 9:30 a.m. until 12:30 p.m.  
Appleton Public Library

Lower Level Meeting Room  
925 So. Oneida Street  
Appleton, WI 54911  
Handicapped accessible

**Wednesday, December 5, 2001**, 9:30 a.m. until 12:30 p.m.  
Green County Agriculture Bldg.  
2841 6th Street  
Monroe WI 53566  
Handicapped accessible

**Thursday, December 6, 2001**, 9:30 a.m. until 12:30 p.m.  
U. W. Pyle Center  
702 Langdon Street  
Madison, WI 53706  
Handicapped accessible

The hearing in Madison on Thursday, December 6, 2001, will have videoconference connections with three additional locations. The public may participate in the hearing by testifying or registering an appearance at any of the four sites, and see as well as listen to testimony from other persons at all of the sites. Videoconference connections will be available from 9:30 a.m. until 12:30 p.m. at the following locations:

- LaCrosse State Office Building, Room B–29  
3550 Morman Coulee Road  
LaCrosse WI 54601  
Handicapped accessible
- Wisconsin Rapids State Office Building  
2610 Industrial Street, Conference Room #4  
Wisconsin Rapids WI 54495  
Handicapped accessible
- University of Wisconsin – Green Bay  
Instructional Services Bldg. Room #1034  
Green Bay, WI 54311  
Handicapped accessible

#### **Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection**

Statutory authority: ss. 93.07 (1), 97.09 (4), 97.20 (4), 97.22 (8), 97.24 (3) and 97.52, Stats.

Statutes interpreted: ss. 93.06 (7) and (8), 97.02, 97.03, 97.12, 97.20, 97.22 to 97.24, 97.50 and 97.52, Stats.

#### **Overview**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) regulates dairy farms to protect consumers and facilitate interstate shipment of Wisconsin dairy products. This rule updates current dairy farm rules under ch. ATCP 60, Wis. Adm. Code. Among other things, this rule:

- Requires out-of-state dairy plant operators to test milk procured in this state from Wisconsin producers, and report test results.
- Authorizes milk producers to ship milk to 2 or more dairy plant operators. Each operator must comply with testing, reporting and other requirements related to milk shipped to that operator. One of the operators must take responsibility for producer licensing functions. That operator must pay the producer’s license, grade A permit and re-inspection fees, and must perform initial dairy farm inspections and biennial water supply tests required for licensing purposes. Operators must report producer transfers.
- Authorizes milk producers (such as grazers) to discontinue milk shipments temporarily, without jeopardizing their license or permit status.

- Extends current rules to cover farms producing milk from sheep (current rules apply to cows and goats).
- Modifies current hot water capacity requirements for dairy farms.
- Authorizes the use of re-circulated water in plate coolers, subject to conditions specified in this rule.
- Authorizes milk producers to milk directly to bulk transport containers, subject to standards specified in this rule.
- Clarifies milk testing and reporting requirements.
- Requires dairy plant operators to respond immediately if the bacteria count in a producer’s milk is more than 750,000 bacteria per ml. (the current “immediate response” level is 1,000,000 per ml.).
- Authorizes electronic reporting of milk test records. Dairy plant operators are encouraged, but not required, to implement electronic reporting by July 1, 2002.
- Requires a dairy plant operator to recover, from producers who contaminate milk with drug residues, the full amount of the operator’s loss related to that milk. Under current rules, an operator must test bulk loads of milk, reject contaminated loads, and recover at least part of the loss from offending producers. This rule requires the operator to recover the full value of each rejected load (not just part), plus disposal costs.
- Tightens the current test standard for beta lactam drug residues in milk, and modifies current standards for Neomycin, Chlortetracycline and Oxytetracycline, per federal standards.
- Requires milk laboratories and laboratory analysts to be certified by DATCP, not the Department of Health and Family Services (DHFS). The Legislature recently transferred dairy, food and water lab certification responsibilities from DHFS to DATCP.
- Codifies DATCP’s current program of performance-based dairy farm inspection. Under this program, DATCP inspects different farms with different frequency, depending on their performance.
- Updates current sanitation requirements for dairy farms.
- Updates current DATCP administrative procedures.
- Make drafting and organizational changes to clarify and modernize current rules.

#### **Background**

DATCP currently licenses and inspects dairy farms under ss. 97.22 to 97.24, Stats., and ch. ATCP 60, Wis. Adm. Code. All dairy farms must be licensed. Grade A dairy farms must also hold a grade A permit. Only grade A milk may be sold as fluid milk. Grade B milk (and grade A milk) may be used to produce cheese and other non-fluid milk products. Grade A milk typically commands a higher price.

All milk must be produced under sanitary conditions. Grade A milk production must also comply with the Interstate Pasteurized Milk Ordinance (PMO). Failure to comply with PMO requirements may jeopardize Wisconsin interstate milk shipments. Current DATCP rules establish standards for grade A and grade B dairy farms. DATCP rules incorporate PMO standards.

A milk producer typically ships milk to a single dairy plant operator, although this industry custom is changing. DATCP licenses dairy plants located in this state. DATCP does not license out-of-state dairy plants, although it does have authority to regulate out-of-state dairy plants that procure milk in this state from Wisconsin producers. DATCP currently regulates dairy plants under ch. ATCP 80, Wis. Adm. Code. ATCP 60 also spells out dairy plant responsibilities related to milk procurement from dairy farms.

Under current law, a dairy plant operator must submit milk producer license applications, license fees, and grade A permit applications on behalf of the milk producers who ship milk to that operator. A dairy plant operator must also test producer milk shipments for drug residues, bacteria, somatic cells and other adulterants, and must report test results to DATCP. A dairy plant operator must reject milk that fails to meet critical minimum standards.

Bulk milk haulers collect milk shipments from dairy farms, and transport those shipments to dairy plants. Each bulk tanker load typically includes milk shipments from several producers, although some large producer shipments may fill an entire tanker. The milk hauler weighs and measures the milk at the farm (for payment purposes), and collects a sample of each producer's milk before that milk is commingled with milk from other producers.

The milk hauler transmits producer milk samples to the dairy plant operator's laboratory for testing. The operator tests samples for drug residues, bacteria and somatic cells, and reports test results to DATCP. DATCP regulates milk haulers under ch. ATCP 82, Wis. Adm. Code, and certifies milk testing laboratories under ch. ATCP 77, Wis. Adm. Code.

Under current rules, a dairy plant operator must also screen each bulk load of milk before the operator commingles that load with any other loads. If a bulk load tests positive for drug residues, the dairy plant operator must reject it and test the individual producer samples for that bulk load. If a producer sample tests positive for drug residues, the dairy plant operator may charge that producer for the cost of the bulk load.

DATCP currently inspects dairy farms, and monitors milk quality test reports. DATCP inspects grade A dairy farms at a specified frequency, based on dairy farm performance. DATCP inspects grade B farms less frequently. DATCP may suspend or revoke a producer's license or grade A permit for cause, including violations of farm sanitation or milk quality standards. Current rules spell out compliance procedures, including notice and appeal procedures.

### **Rule Contents**

#### **Out–of–State Dairy Plants**

Current rules require licensed dairy plants to file license and permit applications for milk producers, pay producer license and reinspection fees, test producer milk shipments, and report test results to DATCP. Current rules do not apply to out–of–state dairy plants, which are not licensed by DATCP, although most out–of–state plants perform these functions voluntarily when procuring milk from Wisconsin producers. This rule requires out–of–state dairy plants to perform these functions when they procure milk in this state from Wisconsin producers. But this rule does not require out–of–state dairy plants to be licensed in this state.

#### **Producer Shipping to 2 or More Dairy Plants**

A milk producer typically ships milk to a single dairy plant operator, although this industry custom is changing. Some large producers concurrently ship milk to 2 or more dairy plant operators. This rule allows a producer to ship to 2 or more dairy plant operators if all the following apply:

- Each operator tests milk shipments shipped to that operator, and reports test results. The operator must also comply with other requirements related to those shipments.
- One of the operators files license and permit applications for the milk producer, and pays producer license and reinspection fees. Under this rule, as under current rules, the operator must charge producer reinspection fees back to the producer.

#### **Producer Transferring Between Dairy Plants**

A dairy plant operator must notify DATCP if a producer transfers to that operator, or if the operator assumes license and fee payment responsibilities for that producer.

#### **Milk Shipments Discontinued**

This rule authorizes a producer (such as a grazer) to discontinue milk shipments for up to 180 days without jeopardizing the producer's license status, and for up to 60 days without jeopardizing the producer's grade A permit status. A dairy plant operator must report to DATCP when the producer stops and resumes shipments.

If a dairy plant operator terminates a milk producer, the operator must report the termination to DATCP. DATCP will revoke the producer's license 30 days after the termination unless the producer is shipping milk to another operator.

#### **Dairy Sheep**

Current dairy farm rules apply to cattle and goats. This rule extends current rules to include sheep.

#### **Lighting in Barns, Milking Parlors and Milkhouses**

This rule increases the minimum lighting standard in barns, milking parlors and milkhouses. This rule requires at least 30 foot–candles of illumination in milking parlors and milkhouses (current rules require 20 foot–candles).

#### **Water Supply**

Under current rules, a dairy plant operator must biennially sample a milk producer's water supply. The water sample must be tested at a certified laboratory. The Legislature recently transferred water lab certification responsibilities from the Department of Health and Family Services (DHFS) to DATCP. DATCP has adopted laboratory certification rules under ch. ATCP 77, Wis. Adm. Code. This rule updates current dairy farm rules to require lab certification by DATCP, not DHFS.

#### **Hot Water**

This rule modifies current capacity requirements for hot water supply systems. This rule eliminates a number of specific capacity requirements, but requires adequate hot water for all milkhouse operations (with a minimum of 10 gallons to clean equipment and utensils). DATCP may approve alternative systems, including heat recovery and continuous flow systems that provide adequate hot water.

#### **Re–Circulated Cooling Water**

Current rules prohibit the use of re–circulated water to cool milk. This rule permits the use of re–circulated water in plate coolers if all the following apply:

- The re–circulated water originates from a safe source that complies with DNR rules.
- The re–circulated water is bacteriologically safe, and is protected from contamination. The milk producer must test for bacteria at least twice a year. Test results must meet minimum standards specified in this rule.
- The re–circulating system uses non–toxic coolants.

If a re–circulating water system becomes contaminated, the milk producer must stop using the system until the producer does all the following:

- Eliminates the contamination source and treats the re–circulated water.
- Re–tests the re–circulated water, and determines that the water meets the bacteriological test standards under this rule.

#### **Toilet Facilities**

This rule re–states, but does not substantially alter, current standards for toilets on dairy farms. Toilets must comply with applicable DNR and Department of Commerce rules.

#### **Milking Directly to Bulk Transport Containers**

Most farmers milk to a permanent bulk tank in the milkhouse, where milk is cooled and stored for shipment. A milk hauler then collects the milk from the bulk tank, and transports it in a bulk milk tanker to a dairy plant. However, some large farmers propose to cut costs by milking directly to the bulk transport container (tanker) in which the farmer then transports the milk to the dairy plant. This rule authorizes producers to milk directly to a bulk transport container if all the following apply:

- The producer controls the operation and maintenance of the bulk transport container. The producer may not collect milk from other producers unless the producer operates as a licensed as a milk hauler under ch. ATCP 82.
- The bulk transport container is constructed and maintained according to bulk milk tanker standards under ch. ATCP 82.
- The bulk transport container has an access port that can be sealed.
- The bulk transport container, while parked at the dairy farm, is kept on a pad of concrete other impervious material. The pad must be located next to the milkhouse, to minimize the length of the transport hose between the milkhouse and the bulk transport container.
- All permanent pipelines connecting the bulk transport container to the milk handling system terminate in the milkhouse.
- The milk producer cools all milk to a temperature of 45° F. (7° C.) or lower before the milk enters the bulk transport container. The producer may use a plate cooler, tube cooler or bulk tank to cool the milk. The producer must measure and record milk temperatures.
- The bulk transport container outlet valve is close-coupled and protected with an effective dust cover.
- The producer keeps the bulk milk cooling device, transport hose and bulk transport container outlet valve in clean and sanitary condition.
- The dairy plant operator collects a milk sample, screens for drug residues, and records the temperature and quantity of milk before unloading the bulk transport container.
- The dairy plant operator cleans and sanitizes the bulk transport container after each milk shipment, just as the operator would clean and sanitize a bulk milk tanker under ch. ATCP 82.

### **Milk Testing and Reporting**

Under current rules, dairy plant operators must test milk from dairy farms and report test results to DATCP. This rule clarifies current reporting requirements and authorizes electronic reporting. Dairy plant operators are encouraged, but not required, to implement electronic reporting by July 1, 2002.

Under this rule, as under the current rule, milk tests must be performed at certified laboratories. Under this rule, milk laboratories and analysts must be certified by DATCP, not the Department of Health and Family Services (DHFS). The Legislature recently transferred dairy, food and water lab certification responsibilities from DHFS to DATCP.

This rule updates current milk test methods. Milk test methods must be those prescribed in “Standard Methods for the Examination of Dairy Products”, 16th edition (1992), or in the “Official Methods of Analysis of the Association of Analytical Chemists (AOAC) International”, 17th edition (2000). DATCP will ask the Attorney General and the Revisor of Statutes for permission to incorporate these updated technical standards by reference in this rule. DATCP may approve other test methods.

### **Bacteriological Testing; “Immediate Response” Levels**

Under current rules, dairy plant operators must take immediate steps if a producer’s milk is found to contain more than 1,000, 000 bacteria per ml. This rule lowers the “immediate” response level to 750,000 bacteria per ml.

### **Drug Residue Testing**

Under current rules, a dairy plant operator must screen each bulk load of milk for drug residues, before the operator commingles that load with any other loads. If a bulk load tests positive for drug residues, the dairy plant operator must reject it and test the individual producer samples for that bulk load. If a producer sample tests positive for drug residues, the dairy plant operator may charge that producer for the cost of the bulk load. Under current rules, the operator must recover at least part of the operator’s loss from the offending producer.

Under this rule, the dairy plant operator must recover the full value of each rejected load (not just part) from the offending producer. The operator must also recover any additional transportation, testing and disposal costs caused by the contamination. If there are 2 or more offending producers, the operator must recover pro rata from those producers based on the relative size of their milk shipments in the contaminated bulk load.

This rule tightens current test standards for beta lactam drug residues in milk, and modifies current standards for Neomycin, Chlortetracycline and Oxytetracycline, per federal standards.

### **Performance–Based Dairy Farm Inspection**

This rule codifies DATCP’s current program of performance–based dairy farm inspection. Under this program, DATCP inspects different grade A dairy farms with different frequency, depending on their performance. The terms of the performance–based inspection are consistent with the requirements of the Interstate Pasteurized Milk Ordinance (PMO).

Under this rule, DATCP must evaluate each grade A dairy farm every 3 months, based on inspection reports, milk quality tests and department compliance actions during the preceding 12 months. Based on this evaluation, DATCP must place the dairy farm in one of the following categories:

**Twelve–Month Inspection Category.** DATCP must inspect a grade A dairy farm in this category at least once every 12 months. DATCP must place a dairy farm in this category if all the following apply, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months:

- All of the producer’s standard plate counts (SPC) are less than 25,000, except one SPC may exceed 25,000 if it is not more than 100,000.
- All of the producer’s somatic cell counts (SCC) are less than 500,000.
- DATCP has not issued any warning for drug residue violations or “key” farm inspection violations.
- No dairy farm inspection report shows more than 5 violations.
- DATCP has not suspended the producer’s grade A dairy farm permit or milk producer license.
- The producer’s latest water supply test complies with this rule.

**Six–Month Inspection Category.** DATCP must inspect a grade A dairy farm in this category at least once every 6 months. DATCP must place a dairy farm in this category if all the following apply, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months:

- The dairy farm fails to qualify for the 12–month inspection category.
- DATCP has not issued more than one warning for violations of bacteria or somatic cell test standards.
- DATCP has not issued any warning for drug residue violations or “key” farm inspection violations.
- No dairy farm inspection report shows more than 5 violations.
- DATCP has not suspended the producer’s grade A dairy farm permit or milk producer license.
- The producer’s latest water supply test complies with this rule.

**Four–Month Inspection Category.** DATCP must inspect a grade A dairy farm in this category at least once every 4 months. DATCP must place a dairy farm in this category if the dairy farm does not belong in the 12–month, 6–month or 3–month inspection category, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months.

**Three–Month Inspection Category.** DATCP must inspect a grade A dairy farm in this category at least once every 3 months. DATCP must place a dairy farm in this category if all the following apply, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months:

The dairy farm does not qualify for the 12–month or 6–month inspection category.

DATCP has done any of the following:

- \* Issued more than one warning for violations of bacteria or somatic cell test standards.
- \* Issued more than one warning for drug residue violations.
- \* Issued more than one warning for “key” farm inspection violations.
- \* Conducted more than one re–inspection of the dairy farm.
- \* Suspended the producer’s dairy farm license or grade A permit.

### Compliance Procedures

This rule clarifies DATCP compliance procedures related to dairy farms. This rule does not make significant changes in current procedures, except that it extends the deadline for holding an informal hearing on a contested drug residue finding. Under current rules, DATCP must hold the informal hearing within 3 business days after the producer requests the hearing, unless the producer requests a later hearing date. Under this rule, DATCP must hold the informal hearing within 10 business days after the producer requests the hearing, unless the producer requests a later hearing date. This new deadline is consistent with the current deadline for holding informal hearings on other contested dairy farm violations.

### Fiscal Estimate

The proposed rule to amend current dairy farm rules under ch. ATCP 60, Wis. Adm. Code, will not have a major fiscal effect on DATCP or local government. This rule updates existing food safety requirements, and accommodates recent changes in dairy farm operations. It also clarifies the responsibility of dairy plant operators with respect to dairy farms.

DATCP currently licenses and inspects dairy farms under ss. 97.22 to 97.24, Stats., and ch. ATCP 60. This requirement would not change. All milk must be produced under sanitary conditions.

Under current law, a dairy plant operator must submit milk producer license applications, annual license fees, and grade A permit applications on behalf of the milk producer. The dairy plant operator must also test producer milk shipments for drug residues, bacteria, somatic cells and other adulterants, and requires reporting test results to DATCP. This requirement will not change.

Current rules spell out compliance procedures, including notice and appeal procedures. This rule clarifies DATCP compliance procedures related to dairy farms. This rule does not make significant changes in current procedures.

### Initial Regulatory Flexibility Analysis

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates dairy farms to protect consumers and facilitate interstate shipment of Wisconsin dairy products. This rule updates current dairy farm rules under ch. ATCP 60, Wis. Adm. Code.

This rule accommodates recent changes in dairy farm operations and updates existing food safety requirements. It also clarifies the responsibility of dairy plant operators with respect to dairy farms.

The impact of this rule modification will not affect small dairy farms in Wisconsin.

Among proposed changes to ATCP 60 are:

- Requires out–of–state dairy plant operators to test milk procured in this state from Wisconsin producers, and report test results.
- Authorizes milk producers to discontinue milk shipments temporarily, without jeopardizing their license or permit status.
- Extends current rules to cover farms producing milk from sheep (currently rules apply to cows and goats).
- Modifies current hot water capacity requirements for dairy farms.
- Authorizes the use of re–circulated water in plate coolers, subject to conditions specified in this rule.
- Authorizes milk producers to milk directly to bulk transport containers, subject to standards specified in this rule.
- Clarifies milk testing and reporting requirements.
- Authorizes electronic reporting of milk test records.
- Requires a dairy plant operator to recover, from dairy producers who contaminate milk with drug residues, the full amount of the operator’s loss related to that milk.
- Requires dairy plant operators to respond immediately if the bacteria count in a producer’s milk is more than 750,000 bacteria per ml.
- Codifies DATCP’s current program of performance–based dairy farm inspection. Under this program, DATCP inspects different farms with different frequency, depending on their performance.
- Updates current sanitation requirements for dairy farms.
- Updates current DATCP administrative procedures.
- Makes drafting and organizational changes to clarify and modernize current rules.

The impact of the proposed rule change on small business is negligible. It would not be necessary for dairy farms to retain additional professional services such as accounting or legal services to comply with this rule.

## Notice of Hearing

### Chiropractic Examining Board [CR 01–118]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Chiropractic Examining Board in ss. 15.08 (5)

(b) and 227.11 (2), Stats., and interpreting s. 446.01 (2), Stats., the Chiropractic Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Chir 4.03; and to create s. Chir 4.02 (3), relating to parapsychological space and the practice of chiropractic.

#### Hearing Date, Time and Location

Date: **December 13, 2001**  
 Time: 9:45 a.m.  
 Location: 1400 East Washington Avenue  
 Room 179A  
 Madison, Wisconsin

**This hearing was originally scheduled for November 15, 2001.**

#### Appearances at the hearing:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by December 27, 2001 to be included in the record of rule-making proceedings.

#### Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats.

Statute interpreted: s. 446.01 (2), Stats.

In a recent opinion of the Attorney General regarding the practice of chiropractic, the definitions of chiropractic that appear in s. 446.01 (2), Stats., and ss. Chir 4.02 and 4.03, contain general language which does not provide specific guidance to chiropractors and to practitioners of other professions. In this proposed rule-making order the board creates additional, more specific language.

#### Text of Rule

SECTION 1. Chir 4.02 (3) is created to read:

Chir 4.02 (3) "Parapsychological space" means the range of motion of a skeletal articulation that exceeds voluntary movement but does not exceed anatomical integrity.

SECTION 2. Chir 4.03 is amended to read:

Chir 4.03 Practice. The practice of chiropractic is the application of chiropractic science in the adjustment of the spinal column, skeletal articulations and adjacent tissue which includes diagnosis and analysis to determine the existence of spinal subluxations and associated nerve energy expression and the use of procedures and instruments preparatory and complementary to treatment of the spinal column, skeletal articulations and adjacent tissue. Diagnosis and analysis may include physical examination, specimen analysis, drawing of blood, blood-analysis and the use of x-ray and other instruments. Any procedure that causes a joint structure of the spine or pelvis to enter the parapsychological space is a practice of chiropractic.

#### Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

#### Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

#### Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495

#### Notice of Hearing

##### Commerce

#### (Manufactured Homes, etc., Chs. Comm 95 – 98) [CR 01–126]

NOTICE IS HEREBY GIVEN that pursuant to s. 101.935 (2) (c) 2., Stats., as amended by 2001 Wis. Act 16, the Department of Commerce will hold a public hearing on proposed rules relating to mobile home park permit fees.

#### The public hearing will be held as follows:

**Tuesday, November 27, 2001**

10:00 a.m. Room 3B, Thompson Commerce Center  
 201 W. Washington Avenue  
 Madison

#### Analysis of Proposed Rules

Statutory Authority: s. 101.935 (2) (c) 2., Stats., as amended by 2001 Wis. Act 16

Statutes Interpreted: s. 101.935 (2) (c) 2., Stats., as amended by 2001 Wis. Act 16

Effective September 1, 2001, 2001 Wisconsin Act 16 transferred the authority of administering the manufactured home park water or sewer service program, Wisconsin Administrative Code chapter PSC 186, from the Public Service Commission (PSC) to the Department of Commerce. The act also gives the Department the authority, beginning in fiscal year 2002–03, to increase the current chapter Comm 95 administration fees to cover the cost of administering chapter PSC 186. The proposed rules consist of an increase in the fees assessed on manufactured home park owners/operators for the costs of administering the manufactured home park regulations in chapters Comm 95 and PSC 186. A rule is also added to clarify the amount that agents must reimburse the Department for the costs of administering the water and sewer service program.

#### Fiscal Estimate

The total annual cost of administering the manufactured home water and sewer service program, including salaries, fringes and supplies, is \$61,400. During fiscal year 2001–02, and in previous fiscal years, fees were assessed by the PSC on an annual basis. The amount assessed was the result of dividing the cost of the program by the total number of manufactured homes sited in Wisconsin and coming up with a per-home cost. The mobile home park owner/operators would then be assessed an amount determined by multiplying the amount of homes owned/operated by the per-home cost. For example, based on an estimated total number of homes in Wisconsin at 50,533 the resultant annual cost to administer the program, per home, would be \$1.22. If a park owner had 50 homes, the annual fee assessed would be 50 times \$1.22 or \$61.00.

The park permit fee is currently based on a numerical "range" of sites and a 2-year cycle. The annual fees to

administer the water and sewer program must be converted to reflect the same range and duration as park permit fees. The permit fee to obtain or renew a 2–year permit, as set forth in section Comm 95.05, is currently: for a mobile home park with 1 to 25 sites, \$200; 26 to 50 sites, \$250; 51 to 100 sites, \$300; and more than 100 sites, \$350. To cover the cost of administering the manufactured home park water and sewer service program these permit fees, based upon the number of parks in the different numerical ranges, must be increased by 50%. With this increase the new permit fees will be: for a mobile home park with 1 to 25 sites, \$300; 26 to 50 sites, \$375; 51 to 100 sites, \$450; and more than 100 sites, \$525.

Commerce currently has designated agents that issue permits and make inspections of the mobile home parks. Of the 1102 parks permitted in the state, 279 are permitted by agents. To maintain continuity, Commerce will administer the water and sewer service program in all parks, whether permitted by the state or its agents. To alleviate any confusion, the agents will charge the same permit fee as Commerce, including the fee to administer the water and sewer service program, and will then reimburse Commerce that portion of the fee collected to cover the cost of administering the water and sewer service program.

#### **Initial Regulatory Flexibility Analysis**

The proposed rules will affect any businesses that own or operate a manufactured home park. There are no reporting, bookkeeping or other procedures required for compliance with the proposed rules. There are no types of professional skills necessary for compliance with the proposed rules.

#### **Appearances at the Hearing**

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until December 7, 2001, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing. Written comments should be submitted to Ronald Acker, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701–2689.

This hearing is held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division web site at:

[www.commerce.state.wi.us/SB/SB–HomePage](http://www.commerce.state.wi.us/SB/SB–HomePage). Paper copies may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, Email [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us), telephone (608) 266–8741 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

## **Notice of Hearing**

### **Financial Institutions – Corporate and Consumer Services [CR 01–122]**

Pursuant to s. 227.17, Stats., notice is hereby given that the Department of Financial Institutions, Division of Corporate and Consumer Services will hold a public hearing at the time and place indicated below to consider repealing and creating rules regarding implementation of the Wisconsin Uniform Commercial Code and operation of a lien filing system. This hearing covers the emergency rules in effect since October 24, 2001 and proposed permanent rules regarding the same.

#### **Date & Time**

**December 3, 2001**

Monday

9:00 a.m.

#### **Location**

Tommy G. Thompson Conf. Room  
5<sup>th</sup> Floor

Department of Financial Institutions  
345 West Washington Avenue  
Madison, WI 53703

This facility is accessible to individuals with disabilities through levels A, B or the first floor lobby. If you require reasonable accommodation to access any meeting, please call Ray Allen at (608) 264–9566 or TTY (608) 266–8818 for the hearing impaired at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided by the Americans with Disabilities Act.

Written comments in lieu of public hearing testimony must be received not later than the hearing date and should be addressed to Ray Allen, Administrator, Department of Financial Institutions, Division of Corporate and Consumer Services, 3<sup>rd</sup> Floor, P.O. Box 7846, Madison, WI 53707–7846.

#### **Analysis Prepared by Department of Financial Institutions, Division of Corporate and Consumer Services**

To repeal ch. SS 3 and to create chs. DFI–CCS 1, 2, 3, 4, 5, 6 and 7; and to repeal emergency rules published and effective July 2, 2001. Statutory authority: 1995 Act 27 s. 9150 (2bt)(f), and ss. 227.24 (1), 227.11 (2) and 409.526, Stats. Summary: 2001 Act 10 repealed and recreated the Wisconsin Uniform Commercial Code (“UCC”), effective July 1, 2001. The act authorizes the Department of Financial Institutions to promulgate rules to implement the UCC. Without these rules, the department will be unable to give effect to the provisions of the UCC. The act is part of an effort by the National Conference of Commissioners on Uniform State Laws and all member states to implement a revised model Uniform Commercial Code on July 1, 2001 to facilitate interstate commerce with nation–wide uniformity in lien filings. The rules address general provisions, acceptance and refusal of documents, the information management system, filing and data entry procedures, search requests and reports, other notices of liens under the UCC, and realty–related filings.

#### **Statutory Authority**

1995 Act 27 s. 9150 (2bt)(f), and ss. 227.24 (1), 227.11 (2) and 409.526, Stats.

#### **Fiscal Estimate**

A summary of the fiscal effects of the proposed rules is as follows. For state fiscal effect: increase existing

appropriation and increase costs. For local fiscal effect: increase costs for counties. Fund sources affected: program revenue; affected Ch. 20 appropriations .20.144 (1) (g).

**Initial Regulatory Flexibility Analysis:**

The rule may have an impact on small businesses. Types of small businesses that will be affected by the rule: any small business which issues a lien or related document under the Wisconsin Uniform Commercial Code. Description of the proposed reporting, bookkeeping and other procedures required for compliance: revised forms and centralized filing location. Types of professional skills necessary for compliance: no new skills.

**Contact Person**

A copy of the full text of the proposed rules and fiscal estimate may be obtained through the following:

Ray Allen, Administrator  
 Department of Financial Institutions  
 Division of Corporate and Consumer Services  
 3<sup>rd</sup> Floor, P.O. Box 7846  
 Madison, WI 53707–7846  
 tel. (608) 264–9566

A copy of the full text of the proposed rules may also be obtained at the department's website, [www.wdfi.org](http://www.wdfi.org).

**Notice of Proposed Rule**

**Transportation  
 [CR 01–121]**

NOTICE IS HEREBY GIVEN that pursuant to the authority of s. 110.20 (9) (d), Stats., as amended by 2001 Wis. Act 16, and 227.11, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 131 without public hearing unless, within 30 days after publication of this notice, on November 15, 2001, the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Questions about this rule and any petition for public hearing may be addressed to Jerry Medinger, Department of Transportation, Bureau of Vehicles Services, Room 253, P. O. Box 7909, Madison, WI 53707–7909, telephone (608) 266–2267.

**Analysis Prepared by the Wisconsin Department of Transportation**

STATUTORY AUTHORITY: s. 110.20 (9) (d), Stats., as amended by 2001 Wis. Act 16

STATUTE INTERPRETED: s. 110.20 (6) (a) 1., Stats.

Ch. Trans 131 governs the operation of the Vehicle Emission Inspection Program. This rule making proposes to amend s. Trans 131.03 (2) (a) which requires a vehicle registrant to obtain an emission test within 90 days prior to registration renewal. Originally, emission testing was done every year. Existing policy that the vehicle must be tested within 90 days prior to registration renewal was intended to assure that no more than 15 months would have passed between a vehicle's testing. Currently, tests are done every two years, and the 90–day window is more restrictive than necessary. We propose making the window 180 days instead of 90 days. The other provisions are references to the period of time prior to registration renewal in which a vehicle may be tested, and are simply changed to correspond to the 180–day period from 90–days.

**Text of Proposed Rule**

Under the authority vested in the state of Wisconsin, department of transportation, by s. 110.20 (9) (d), Stats., as amended by 2001 Wis. Act 16, the department of transportation hereby proposes to amend a rule interpreting s. 110.20 (6) (a) 1., Stats., relating to vehicle emission inspections.

SECTION 1. Trans 131.03 (2) (a) is amended to read:

Trans 131.03 (2) (a) No more than 90 180 days prior to renewal of annual registration. In the 2nd year after the nonexempt vehicle's model year and every 2 years thereafter.

SECTION 2. Trans 131.04 (1) (b) is amended to read:

Trans 131.04 (1) (b) The emission related repairs and adjustments made to the vehicle's emission control system, including cost for parts and labor, have been performed on the vehicle within 90 180 days prior to renewal of annual registration or within 90 180 days of vehicle ownership change registration and such repairs and adjustments are indicated in the space provided on the vehicle inspection report by the person performing the repairs. If the labor for vehicle repair is performed without charge or cost, only the cost of replacement parts shall be indicated. An itemized receipt indicating the parts, labor cost, and date of purchase shall be provided to the waiver investigator.

SECTION 3. Trans 131.08 (1) is amended to read:

Trans 131.08 (1) ELIGIBILITY. When a vehicle subject to the emission inspection requirements of this chapter is unavailable for an inspection due to either the vehicle's absence or inoperative condition, or the owner's or lessee's absence or incapacity, during the 90 180 day period prior to the license expiration date, or within 45 days of an ownership change registration or registration as a collector or hobbyist vehicle, and inspection is not available under Trans 131.10, the owner or lessee may request of the department a letter of temporary exemption from the requirements of this chapter.

SECTION 4. Trans 131.10 (1) is amended to read:

Trans 131.10 (1) COMPLIANCE. When a vehicle subject to the emission inspection requirements of this chapter is unavailable for an inspection due to the vehicle's absence from the Wisconsin inspection area during the 90 180 day period prior to the license expiration date, or within 45 days of an ownership change registration or registration as a collector or hobbyist vehicle, but is operating in another nonattainment area requiring vehicle emission inspections, the owner or lessee shall submit an official vehicle inspection report, or the equivalent document, from that area indicating that the vehicle has passed the emission inspection in that area.

**Fiscal Effect**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

**Initial Regulatory Flexibility Analysis.**

This proposed rule will have no adverse impact on small businesses.

**Copies of Rule**

Copies of the proposed rule may be obtained upon request, without cost, by writing to Jerry Medinger, Third Party Programs Section, P. O. Box 7909, Madison, WI 53707–7909, or by calling (608) 266–2267. Hearing-impaired individuals may contact the Department using TDD (608) 266–3096. Alternate formats of the proposed rule will be provided to individuals at their request.

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## Submittal of proposed rules to the legislature

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*Please check the Bulletin of Proceedings for further information on a particular rule.*

**Administration**

(CR 01–086)

Ch. Adm 48 – Relating to the department’s comprehensive planning and transportation planning grants to local governmental units.

**Agriculture, Trade and Consumer Protection**

(CR 01–042)

Ch. ATCP 55–56 – Relating to meat and meat food products.

**Health and Family Services**

(CR 01–089)

Ch. HFS 94 – Relating to the rights of patients to make telephone calls.

**Insurance**

(CR 01–072)

Ch. Ins 6 – Relating to agent transactions with customers.

**Pharmacy Examining Board**

(CR 01–091)

Ch. Phar 2 – Relating to examinations for original licensure and for persons licensed in another state.

**Regulation and Licensing**

(CR 01–098)

Chs. RL 80 – 87 – Relating to the 2001 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

**Regulation and Licensing**

(CR 01–100)

Ch. RL 87 – Relating to real estate appraisers.

**Regulation and Licensing**

(CR 01–102)

Ch. RL 87 – Relating to the 2002 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

**Revenue**

(CR 01–088)

Chs. Tax 61, 62 and 63 – Relating to the contracting methods used by the Wisconsin Lottery relative to non–profit retail organizations.

**Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board**

(CR 01–059)

Ch. SFC 3 – Relating to course descriptions for students applying for social worker training certificate.

**Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board**

(CR 01–094)

Ch. SFC 3 – Relating to the minimum number of hours to be required in a social worker training certificate internship.

**Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board**

(CR 01–095)

Ch. SFC 3 – Relating to the social worker temporary certificate to conform to a new procedure for computerized examinations.

**Transportation**

(CR 01–097)

Ch. Trans 276 – Relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

**Workforce Development**

(CR 01–099)

Ch. DWD 11 – Relating to aid to families with dependent children.

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## Rule orders filed with the revisor of statutes bureau

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*The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at (608) 266–7275 for updated information on the effective dates for the listed rule orders.*

### **Commerce (CR 01–044)**

An order affecting ch. Comm 30, relating to fire department safety and health.  
Effective 1–1–02

### **Health and Family Services (CR 00–091)**

An order affecting ch. HFS 112, relating to licensing of emergency medical technicians–paramedic and approval of emergency medical technician–paramedic operational plans.  
Effective 12–1–01

### **Natural Resources (CR 01–007)**

An order affecting chs. NR 5 and 50, relating to boating safety and enforcement.  
Effective 12–1–01

### **Natural Resources (CR 01–038)**

An order affecting ch. NR 8, relating to the issuance of licenses and approvals.  
Effective 12–1–01

### **Natural Resources (CR 01–053)**

An order affecting ch. NR 166, relating to safe drinking water loan program financial assistance.  
Effective 1–1–02

### **Natural Resources (CR 01–066)**

An order affecting ch. NR 10, relating to the 2001 migratory game bird season.  
Effective 12–1–01

### **Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board (CR 01–020)**

An order affecting ch. SFC 4, relating to supervision of precertification supervised practice of social work.  
Effective 1–1–02

### **Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board (CR 01–026)**

An order affecting chs. SFC 7, 12, 13, 14 and 20, relating to conforming existing rules to present practices and to other rules.  
Effective 1–1–02

### **Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board (CR 01–027)**

An order affecting ch. SFC 11, relating to professional counselor training certificates.  
Effective 1–1–02

### **Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board (CR 01–064)**

An order affecting ch. SFC 1, relating to the state jurisprudence examination.  
Effective 1–1–02

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## Public notice

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### **Workforce Development**

(Child Support Lien Docket)

The Wisconsin Department of Workforce Development hereby gives notice that the statewide child support lien docket, authorized by s. 49.854, Stats., is operational effective December 1, 2001.

**The State of Wisconsin  
Department of Administration  
Bureau of Document Services  
Document Sales and Distribution Section  
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